

House Bill 472 (COMMITTEE SUBSTITUTE)

By: Representatives Reeves of the 34th, Rogers of the 10th, LaRiccia of the 169th, Lott of the 122nd, and Dempsey of the 13th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to general provisions of the Juvenile Code, so as to revise procedures concerning removal considerations; to provide for definitions; to provide that the Department of Juvenile Justice staff acting as juvenile court intake officers may not make determinations concerning alleged dependent children; to participate in training; to provide that before a juvenile court removes a child from the child's parent, guardian, or legal custodian and places the child in protective custody, the court shall consider whether there are reasonable temporary alternatives to foster care; to permit the court to order temporary alternatives to foster care ex parte, prior to preliminary protective hearings; to provide that the juvenile court may order temporary alternatives to foster care following a preliminary protective hearing; to provide time limits for preliminary protective hearings and adjudicatory hearings when a temporary alternative to foster care is ordered; to provide considerations for less restrictive placements; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 11 of Title 15 of the Georgia Code Annotated, relating to general provisions of the Juvenile Code, is amended by revising paragraph (33) of and adding a new paragraph to Code Section 15-11-2, relating to definitions, as follows:

"(33) 'Fictive kin' means a person who is ~~known to a child as a relative, but is not, in fact, related by blood or marriage to such child and with whom such child has resided or had significant contact~~ not related to the child by blood, marriage, or adoption but who prior to his or her placement in foster care is known to the family, has a substantial and positive relationship with the child, and is willing and able to provide a suitable home for the child."

26 "(73.1) 'Temporary alternatives to foster care' means measures that a juvenile court may
27 order in lieu of removal of or placement of a child or children alleged to be dependent in
28 protective custody which will prevent or reduce the trauma or removal; allow a child to
29 be cared for by persons with whom the child has an existing bond or attachment; or that
30 ensure the safety of the child pending further action by the court on the dependency
31 complaint or petition."

32 **SECTION 2.**

33 Said chapter is further amended by revising subsection (b) of and adding a new subsection
34 to Code Section 15-11-68, relating to the duties of juvenile court intake officers, to read as
35 follows:

36 "(b) Notwithstanding subsection (a) of this Code section, DJJ, as the employer, shall
37 maintain sole authority over the duties and responsibilities of all DJJ staff members serving
38 as juvenile court intake officers. No DJJ staff member shall serve as a juvenile court intake
39 officer in a dependency proceeding commenced under Article 3 of this chapter.

40 (c) Each juvenile court intake officer exercising the authority to remove a child pursuant
41 to the provisions of Articles 1 and 3 of this chapter shall first successfully complete, each
42 year, eight hours of appropriate training relevant to the performance of such
43 determinations, including, but not limited to, training concerning contrary to the welfare
44 determinations, reasonable efforts to prevent removal of a child and diligent search
45 requirements consistent with Article 3 of this chapter, reasonable alternatives to foster care,
46 and DFCS policies and procedures related to the removal of a child and placement of such
47 child in foster care."

48 **SECTION 3.**

49 Said chapter is further amended by revising Code Section 15-11-133, relating to removal of
50 children from home and protective custody, as follows:

51 "15-11-133.

52 (a) A child may be removed from his or her home, without the consent of his or her
53 parents, guardian, or legal custodian:

54 (1) Pursuant to an order of the court under this article; or

55 (2) By a law enforcement officer or duly authorized officer of the court if a child is in
56 imminent danger of abuse or neglect if he or she remains in the home.

57 (b) Upon removing a child from his or her home, a law enforcement officer or duly
58 authorized officer of the court shall:

(1) Immediately deliver such child to a medical facility if such child is believed to suffer from a serious physical condition or illness which requires prompt treatment, and, upon delivery, shall promptly contact DFCS;

(2) Bring such child immediately before the juvenile court or promptly contact ~~a the juvenile court intake officer~~; and

(3) Promptly give notice to the court and such child's parents, guardian, or legal custodian that such child is in protective custody, together with a statement of the reasons for taking such child into protective custody.

(c) The removal of a child from his or her home by a law enforcement officer shall not be deemed an arrest.

(d) A law enforcement officer removing a child from his or her home has all the privileges and immunities of a law enforcement officer making an arrest.

(e) A law enforcement officer shall promptly contact ~~a the juvenile court intake officer~~ for issuance of a court order once such officer has taken a child into protective custody and delivered such child to a medical facility.

(f) ~~The A juvenile court intake officer~~ shall immediately determine if a child should be released, remain in protective custody, or be brought before the court upon being contacted by a law enforcement officer, duly authorized officer of the court, or DFCS that a child has been taken into protective custody.

(g) In addition to the requirements of Code Section 15-11-134, prior to authorizing the removal of a child from his or her home as provided in paragraph (1) of subsection (a) of this Code section or ordering a child to remain in protective custody as provided in subsection (f) of this Code section, the court shall consider whether there are reasonable alternatives to the removal of the child and placement of the child in foster care and may order temporary alternatives to foster care in lieu of removing the child and placing the child in protective custody or continuing the child in protective custody pursuant to Code Section 15-11-133.1."

SECTION 4.

Said chapter is further amended by adding a new Code section to read as follows:

"15-11-133.1.

(a) Temporary alternatives to foster care may be ordered by the court ex parte, prior to a preliminary protective hearing, or may be ordered following a preliminary protective hearing. A temporary alternative to foster care may include one or more of the following:

(1) A temporary order authorizing the child to be cared for by a relative or fictive kin;

(2) A temporary protective order pursuant to the provisions of Code Section 15-11-29;

or

(3) An order that the DFCS investigate and report to the court whether removal is necessary.

(b) An order pursuant to paragraph (1) of subsection (a) of this Code section requiring the child to be cared for by a relative or fictive kin shall be based upon a finding by the court that continuation of the child in his or her home would be contrary to his or her welfare. Such findings shall be made on an individualized basis and shall be documented in the court's written order.

(c) When entering an order pursuant to paragraph (1) of subsection (a) of this Code section, the court shall order a preliminary assessment of the person who is to provide care for the child by a probation officer, or such other individual or agency as the court may designate, which shall include, at a minimum:

(1) A walk-through of such person's residence to identify safety hazards;

(2) An in-state criminal record check, pursuant to subsection (a) or (c) of Code Section 35-3-34, of such person and all other adults living in such person's residence;

(3) A search of the Georgia Sex Offender Registry for the name of such person and all other adults living in such person's residence;

(4) A search of data provided electronically to the public by the Department of Community Supervision and the Department of Corrections for information concerning such person and all adults living in such person's residence; and

(5) If DFCS is conducting the assessment, a search of the child abuse registry.

Such preliminary assessment shall be completed no later than 72 hours after the time such order is entered except that if such order is entered on a weekend, such preliminary assessment may be completed no later than five days after the order is entered.

(d) Upon issuance of an order for a temporary alternative to foster care, a preliminary protective hearing shall be completed as provided in Code Section 15-11-145, except that such preliminary protective hearing shall be held within five days of the order for a temporary alternative to foster care.

(e) Unless modified by the court, temporary alternatives to foster care ordered by the court in accordance with this Code section shall remain in effect until modified by the court or until the court has held the preliminary protective hearing. The court may continue to impose the temporary alternatives to foster care after the preliminary protective hearing in accordance with subsection (b) of Code Section 15-11-146."

SECTION 5.

Said chapter is further amended by revising subsections (b) and (c) of Code Section 15-11-146, relating to preliminary protective hearing and findings, as follows:

"(b) The court:

(1) On finding that the complainant has proven neither of the required elements prescribed in subsection (a) of this Code section, shall dismiss the case and shall return the child before the court to his or her parent, guardian, or legal custodian;

(2) On finding that the complainant has not met the burden of proving that protective custody is necessary, shall return the child before the court to his or her parent, guardian, or legal custodian pending the hearing on the dependency petition. The court may also order a temporary alternative to foster care as provided in subsection (a) of Code Section 15-11-133.1 if it determines that such an order is necessary to prevent abuse or neglect prior to the adjudicatory hearing and to prevent the need for the child to be placed in foster care; or

(3) On finding that the complainant has met the burden prescribed in subsection (a) of this Code section, may place the child before the court in the temporary custody of DFCS pending the hearing on the dependency petition. DFCS shall prioritize temporary placement with an adult who is a relative or fictive kin, provided that such individual has met DFCS's requirements for relative placement and such temporary placement is in the best interests of such child.

(c) A court's order removing a child from his or her home or ordering a temporary alternative to foster care in accordance with paragraph (1) of subsection (a) of Code Section 15-11-133.1 shall be based upon a finding that:

(1) Continuation in his or her home would be contrary to such child's welfare; ~~and~~ or

(2) Removal is in such child's best interests."

SECTION 6.

Said chapter is further amended by revising subsection (a) of Code Section 15-11-181, relating to adjudication hearing, as follows:

"(a) The court shall fix a time for an adjudication hearing. If the alleged dependent child is in foster care, the hearing shall be scheduled for no later than ten days after the filing of the petition alleging dependency. If the alleged dependent child is not in foster care, but the court has ordered a temporary alternative to foster care, the adjudication hearing shall be held no later than 30 days after the filing of the petition alleging dependency. Otherwise, the adjudication hearing shall be held no later than 60 days after the filing of the petition alleging dependency. If adjudication is not completed within 60 days from the date such child was taken into protective custody, the petition alleging dependency may be dismissed without prejudice."

SECTION 7.

Said chapter is further amended by revising subsection (c) of Code Section 15-11-411, relating to temporary custody and time limitations, as follows:

"(c) If a parent, guardian, or legal custodian has not assumed custody of his or her child at the end of the 12 hour period described in subsection (a) of this Code section, the court shall be notified and shall place such child in the least restrictive placement consistent with such child's needs for protection or control. In making its determination of placement, the court should consider the following placement options:

(1) In the custody of such child's parents, guardian, or legal custodian upon such person's promise to bring such child before the court when requested by the court;

(2) Before placing the child in the custody of DFCS, whether the child may be placed with a relative or fictive kin upon such person's promise to bring such child before the court when requested by the court;

~~(2)~~(3) In the custody of DFCS which shall promptly arrange for foster care of such child;

~~(3)~~(4) In a secure residential facility or nonsecure residential facility in accordance with Code Section 15-11-412; or

~~(4)~~(5) In any other court-approved placement that is not a secure residential facility or nonsecure residential facility."

SECTION 8.

Said chapter is further amended by revising subsection (c) of Code Section 15-11-414, relating to continued custody hearings and findings, as follows:

"(c) If the court determines there is probable cause to believe that a child has committed a status offense or is otherwise in need of services, the court may order that such child:

(1) Be released to the custody of his or her parent, guardian, or legal custodian; or

(2) Be placed in the least restrictive placement consistent with such child's need for protection and control as authorized by Code Section 15-11-411 and in accordance with Code Section 15-11-415. Before placing the child in the custody of DFCS, the court shall consider whether the child may be placed with a relative or fictive kin upon such person's promise to bring such child before the court when requested by the court. Upon finding that such a placement may be made, the court is authorized to order such a placement."

SECTION 9.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

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SECTION 10.

198 All laws and parts of laws in conflict with this Act are repealed.